

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

JEFFREY L. RECKLING AND)	
JERRI L. RECKLING)	
)	CASE NO. 02R-84
Appellant,)	
)	FINDINGS AND ORDER
vs.)	REVERSING THE DECISION OF THE
)	CASS COUNTY BOARD OF
CASS COUNTY BOARD OF)	EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Jeffrey L. Reckling and Jerri L. Reckling to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Tax Equalization and Review Commission's Hearing Room on the sixth floor of the State Office Building in the City of Lincoln, Lancaster County, Nebraska, on March 12, 2003, pursuant to a Notice and Order for Hearing issued December 17, 2002. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Jeffrey L. Reckling and Jerri L. Reckling ("the Taxpayer") appeared at the hearing. The Cass County Board of Equalization ("the County Board") appeared through counsel, Nathan B. Cox, Esq., the County Attorney for Cass County, Nebraska. The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by *Neb. Rev. Stat. § 77-5018* (Cum. Supp. 2002) to state its final decision concerning an appeal, with findings of fact and conclusions of law, on the

record or in writing. The final decision and order in this case is as follows.

**I.
STANDARD OF REVIEW**

The appellant, in order to prevail, is required to demonstrate by clear and convincing evidence that the decision of the County Board was incorrect and arbitrary or unreasonable. *Neb. Rev. Stat. § 77-5016(7) (Cum. Supp. 2002)*. The presumption created by the statute can be overcome if the appellant shows by clear and convincing evidence that the County Board of Equalization either failed to faithfully perform its official duties or that the County Board of Equalization failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). It is the appellant's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the Board was unreasonable. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

**II.
FINDINGS**

The Commission finds and determines that:

**A.
PROCEDURAL FINDINGS**

1. The Taxpayer is the owner of record of certain rural residential real property described in the appeal as Tax Lot 3, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 34, Township 12 North,, Range 12 East of the 6th P.M., Cass County, Nebraska ("the subject property").
2. The actual or fair market value as of January 1, 2002, ("the assessment date") placed on the assessment roll for the subject property by the Cass County Assessor was:

Land value	\$ 19,425.00
Improvement value	<u>\$186,834.00</u>
Total value	<u><u>\$206,259.00.</u></u>
3. The Taxpayer timely protested that value to the Cass County Board of Equalization. The Taxpayer proposed the following value:

Land value	\$ 19,425.00
Improvement value	<u>\$150,575.00</u>
Total value	<u><u>\$170,000.00.</u></u>
4. The Cass County Board of Equalization denied the protest.
(E:1)

5. The Taxpayer timely filed an appeal of that decision to the Commission.
6. The Cass County Board of Equalization was served with a Notice in Lieu of Summons, and duly answered that Summons.
7. A Notice and Order for Hearing issued on December 17, 2002, set a hearing of the Taxpayer's appeal for March 12, 2003, at 10:30 A.M. CST.
8. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice and Order for Hearing was served on all parties.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property, described in the appeal as Tax Lot 3, SE¼SE¼ Section 34, Township 12 North, Range 12 East of the 6th P.M., Cass County, Nebraska, is owned by the Taxpayer.
2. The subject property is a 3.11 acre tract of land with a one and one-half story single family residence having 1,333 square feet of above ground living space, a chicken house, a loft barn, a wash house, an equipment shed, a granary and a detached garage. (E13:1-4).
3. One of the Taxpayer's testified that the subject property is bordered on the south and east by County roads and that dust from the South Road sometimes restricts usage of the subject property.

4. The effect of dust on actual or fair market value of the subject property was not stated.
5. One of the Taxpayer's stated that in their opinion, the value of the subject property on the assessment date was the value shown in an appraisal as of November 9, 2001 adjusted by the addition of \$15,000.00 for market appreciation to January 1, 2002.
6. The appraised amount was \$170,000.00. (E12:2).
7. The total of the appraisal and the adjustment is \$185,000.00 (\$170,000.00 + \$15,000.00).
8. The appraisal report offered by the Taxpayer's and introduced by the County was used by one of the Taxpayers to support an opinion of value, was prepared utilizing three comparable properties. (E12:3).
9. When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation*, 2nd Ed., 1996, p.103. Most adjustments are for physical characteristics. *Property Assessment Valuation*, 2nd Ed., 1996, p.105. "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . . " *Property Assessment Valuation*, 2nd Ed., 1996, p. 98.

10. One of the Taxpayers testified that a comparable used in the appraisal report shown in Exhibit 12 was in a town while the subject property is located in a rural area of Cass County.
11. One of the Taxpayers testified that a comparable used in the appraisal report shown in Exhibit 12 was not located in Cass County.
12. One of the Taxpayer's testified that the location of the third comparable whether rural or urban was unknown.
13. No adjustments for location of comparables in relation to the subject property were made in the appraisal report as shown in Exhibit 12.
14. The County Assessor testified that the subject property was valued as of the assessment date using the market approach.
15. The market or sales comparison approach is one of the methods of valuing real property allowed by *Neb. Rev. Stat.* 77-112 (Cum. Supp. 2002).
16. The County Assessor testified that data errors were made in the process of determining a value for the subject property as of the assessment date.
17. The County Assessor testified that the data errors were discovered at the time exhibits were being prepared for submission in this case.
18. The County Assessor testified that the data errors and their effects are shown on Exhibit 14:2-3.

19. The County Assessor testified that actual or fair market value of the subject property as of the assessment date was based on the revised analysis should be valued as follows:
Land \$19,425.00; Improvements \$171,570.00; Total \$190,995.00. (Note the Assessor total is \$190,895.00) (E14:1)
(E14:2)
20. The difference between the Taxpayer's opinion of actual or fair market value as of the assessment date and the revised actual or fair market value as of the assessment date determined by the County Assessor is \$5,895.00 or about 3% of the value proposed by the Taxpayer.
21. The difference between the opinion of actual or fair market value as of the assessment date testified to by one of the Taxpayers, and the revised actual or fair market value as of the assessment date determined by the County Assessor is not a significant difference and does not amount to more than a difference of opinion.
22. The Taxpayer has adduced sufficient clear and convincing evidence to overcome the statutory presumption in favor of the County Board of Equalization.
23. Based on the entire record before it, the Commission finds and determines that the actual or fair market value as of the assessment date for the subject property for the tax year 2002 is:

Land value	\$ 19,425.00
Improvement value	<u>\$171,570.00</u>
Total value	<u>\$190,995.00.</u>

24. The assessed or taxable value of the subject property as of the assessment date determined by the County is not supported by the evidence.
25. The decision of the County Board was incorrect, arbitrary and unreasonable.
26. The decision of the County Board should be vacated and reversed.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002). The Nebraska Supreme Court, in considering similar language, has held that "There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent

evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001). A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000). The term "unreasonable" can be applied to a decision of an administrative agency only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).

3. The Court has also held that "In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly

excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. "It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization." *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58 (Neb. 1991).
5. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
6. The appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

7. Actual value of real property for purposes of taxation may be determined using professionally accepted mass appraisal methods, including, but not limited to, (1) the sales comparison approach, taking into account factors such as location, zoning, and current functional use; (2) the income approach; and (3) the cost approach. This statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes. *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 18, 624 N.W.2d 63, 69 - 70, (2001).

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the order of the Cass County Board of Equalization setting the assessed value of the subject property for the assessment date, January 1, 2002, is vacated and reversed.
2. That the actual or fair market value of the residential real property described in the appeal as Tax Lot 3, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, Township 12 North, Range 12 East of the 6th P.M., Cass County, Nebraska, as of the assessment date January 1, 2002, for the tax year 2002 is as follows:

Land value	\$ 19,425.00
Improvement value	<u>\$171,570.00</u>
Total value	<u><u>\$190,995.00.</u></u>

3. That this decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2002).
4. That any request for relief, by any party, which is not specifically provided for by this order is denied.
5. That each party is to bear its own costs in this matter.
6. That this decision shall only be applicable to tax year 2002.
7. This order is effective for purposes of appeal April 2, 2003.

IT IS SO ORDERED.

Dated April 2, 2003.

Wm R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner